

18/11/53

The Gazette of India



EXTRAORDINARY
PART II—Section 3
PUBLISHED BY AUTHORITY

No. 312] NEW DELHI, TUESDAY, DECEMBER 15, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 1st December 1953

S.R.O. 2270.—Whereas the elections of Shri Laxmi Narain Mateh and Shri Ram Dass, as members of the Legislative Assembly of the State of Vindhya Pradesh from the Seondha constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Balchand, son of Shri Baij Nath Prasad, resident of Basai, District Datia, and Shri Har Das Chamar, son of Shri Madari, resident of Datia, District Datia;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, NOWGONG, VINDHYA PRADESH

ELECTION PETITION No. 309 OF 1952

PRESENT

Chairman

1. Shri S. N. Vaish, B.A., LL.B., Retd. District & Sessions Judge, U.P.

Members

2. Dr. L. N. Misra, M.A., LL.B., Ph.D., Retd. District & Sessions Judge, U.P.

3. Shri P. Lobo, Advocate, Supreme Court.

1. Shri Balchand, s/o Shri Baijnath Persad, r/o Basai, District Datia.

2. Shri Har Das Chamar (SCF), s/o Madari, r/o Datia—Petitioners.

Vs.

1. Shri Laxaminarain Mateh, s/o Panna Lal, r/o Digwa, District Datia.

2. Shri Ram Anugrah Singh, s/o Man Singh, r/o Giara, District Datia.

3. Shri Bhagwan Das Mateh, s/o Ram Gopal, r/o Digwa, District Datia.

4. Shri Shanker Singh, s/o Shri Nahar Singh, District Datia.

5. Shri Ram Das, s/o Halku, District Datia.

6. Shri Chaturi Chamar, s/o Shri Mari, r/o Seondha, District Datia.

7. Shri Shiva Narain Khare, s/o Girja Prasad, r/o Datia.
8. Shri Sripat Singh, s/o Chukkhu Singh, r/o village Murgawan, District Bettiah.
9. Shri Ram Sewak Gupta Vakil, r/o Seondha, District Datia, V.P.
10. Shri Ram Din Valsh, r/o Seondha, District Datia.
11. Shri Girja Prasad, s/o Lala Sujan Singh, r/o village Basai, District Datia.
12. Shri Har Narayan, s/o Madari, r/o Mohalla Bhanderi Phatak, Datia, V.P.—Respondents.

ORDER

This is an election petition filed by a voter named Balchand and a defeated candidate named Hardas Chamar, challenging the election of the Respondents Nos. 1 and 5 to the Vindhya Pradesh Legislative Assembly from Seondha Constituency which is a double member constituency. The petitioner No. 2 and the Respondents Nos. 1 to 7 had gone to the polls while the Respondents Nos. 8 to 12 are said to have withdrawn their candidature within time. The petitioners pray that the election of the Respondents Nos. 1 and 5 as well as the election as a whole be declared as void.

Respondents Nos. 1, 3, 5 and 7 only filed their written statements out of whom the Respondents Nos. 3 and 7 supported the petitioners. In their written statements the Respondents Nos. 1 and 5 categorically denied all the grounds for declaring the election to be void and pressed that certain matters be not allowed to go to trial. Issues were thus struck of which Nos. 19(b), 24, 25, 26 and 27 were first heard and disposed of in our order, dated January 24, 1953. As a result of our findings on the said preliminary issues and within the limits specified therein, evidence was, however, allowed to be given on the following remaining issues which we now take up for disposal:—

REMAINING ISSUES

1. Were the ballot boxes, used in the Election, defective and contrary to the mandatory provisions of law, could they be unlocked and the ballot papers taken out therefrom without their seals being broken and has this resulted in a serious non-compliance with the provisions of the Constitution and the Acts and Rules made for holding Elections? If so, how is the petition affected thereby?
2. Was the sealing of the ballot boxes not done in accordance with provisions of sub-rule 5 of rule 21 of the R. P. R. of 1951 and was any irregularity as alleged in clause (b) of para. 8 committed by the Returning Officer?
3. Was there any non-compliance on the part of the presiding officers with the provisions of the rules 32 and 33 of the Representation of the People Rules, 1951, as alleged in clauses (c) and (d) of para. 8 of the petition? If so, what is the effect?
4. Was there any non-compliance with, or breach of, the rules 46 and 50 on the part of the Returning Officers as alleged in clauses (e) and (f) of para. 8 of the petition? If so, what is the effect?
5. Were the arrangements for the safe transport of the ballot boxes and papers and for their safe custody, defective as alleged in clause (g) of para. 8 of the petition? And were the ballot boxes etc. in fact approached by various people with ample opportunity to tamper them? If so, what is the effect?
6. Were the ballot boxes defective as alleged in clause (h) of para. 8? If so, what is the effect?
7. Were the nomination papers of Respondents Nos. 1, 3 and 7 improperly accepted? And has this fact materially affected the result of the election?
8. Was the Respondent No. 1 disqualified from being chosen as a member of the Legislative Assembly under section 7(d) of the R. P. Act 1951?
9. Were the allotments of symbols to Respondents Nos. 5 and 6 wrong as alleged in clause (k) of para. 8 of the petition?
10. Were the Respondents 5 and 7 not qualified to be chosen to fill a seat in the Legislature of V.P. under article 173 of the Constitution of India?
11. Were Respondents 1, 5 and 7 below 25 years of age at the time of nomination and hence not qualified to be chosen a member?

12. Was the allotment of symbols to Respondents Nos. 1 to 6 illegal and for this reason their nomination defective?

13. Did the Respondents Nos. 1 and 5 freely distribute at various polling stations during the poll biris, betels and sweets among the voters? If so, what is the effect?

14. Is the Respondent No. 6 a member of the scheduled caste community and has his nomination paper been wrongly accepted?

15. Was the nomination paper of Shri Goti Ram improperly rejected and has this rejection materially affected the result of the election?

16. Were any pamphlets as alleged in clauses (q) and (r) of para. 8 published? If so, what is the effect?..

17. Were voters prevented from casting their votes as alleged in clause (s) in para. 8? If so, what is the effect?

18. Are the allegations in clauses (t) and (u) of para. 8 correct? If so what is the effect?

19. (a) Were the returns of election expenses filed by the Respondent No. 1 false in material particulars and have they not been filed and verified properly?

20. Were any ballot papers wrongly rejected as alleged in clause (x) of para. 8? If so, what is the effect?

21. Are the allegations contained in particulars 1 to 4 correct? If so, what is the effect?

22. Did Shri W. V. Kelkar the Returning Officer of Datia hold out the threat alleged in particular No. 5 of the list? If so, what is the effect?

23. Are the all allegations contained in particulars Nos. 6 to 10 of the list correct? If so, what is the effect?

24. Are the allegations contained in para. 11 of the written statements of the Respondent No. 7 and para. 9 of Respondent No. 3 correct? If so, what is the effect?

FINDINGS

Issues 1 to 6.—The allegations to which these issues relate are to be found in clauses (a) to (h) of para. 8 of the petition. The contention of the petitioners in the main is that the ballot boxes used in the election which were of the Godrej type, were defective in their very construction and this defect lent itself to tampering with their contents. We have already dealt with this point in some detail in our findings on similar issues in Election Petition No. 259 of 1952 *Jang Bahadur Singh Vs. Basant Lal and others* as well as in E. P. No. 258 of 1952, *Laxmi Narain Naik Vs. Lala Ram Bajpai and others*. It is needless to repeat the same observations in this case. A reference to our observations in the said connected cases should suffice. For the reasons given in the said connected cases, we hold likewise that there has been a non-compliance with the provisions of clauses 1 and 5 of Rule 21 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951. Similarly we hold that there was non-compliance of the Rules 32 and 33 of the said Rules.

We, however, find that the result of the election has not been shown to have been materially affected in this case, as in those connected cases, by any non-compliance with the provisions of said Rules. So the election of the contested Respondents cannot be declared void merely on the ground of any defect in the make of the ballot boxes, or rather in their locking arrangement, or on account of any other non-compliance with the said rules. We may observe that the petitioner's counsel did not press any other allegations before us, except those which have already been dealt with in the said connected petitions. These issues are, therefore, decided against the petitioners.

Issue Nos. 7 to 12.—These issues may be disposed of together as they all relate to the alleged disqualifications of the Respondents Nos. 1 and 3 to 7 and to their nominations being defective.

The allegation relating to issue No. 7 is contained in para. 8(i) of the petition which runs as follows:—

"Because the nomination papers of Respondents Nos. 1 and 3 to 7 were not properly accepted and the same had materially affected the result of the election. As this allegation was not quite clear in respect of grounds on which it was based the learned counsel for the petitioner was asked to clarify under Order 10 Rule

2 C.P.C. this and the other allegations contained in clauses (j), (k), (l) and (m). It may be mentioned what the case of the petitioner was at the time of the framing of the issues in respect of each of the Respondents 1 to 7.

As against the Respondent No. 1 the petitioner's case was that he was a member of a joint Hindu family with his uncle Khusali Ram, that the said joint family carried on a joint family business at Datia in the name and style of Panna Lal Khusali Ram, Commission Agents, that the Respondent No. 1 had thus interest in the said joint family firm at the time of his nomination as a candidate for the V.P. Legislative Assembly, that the said joint family firm was a member of the Sugar Syndicate, Datia which held the contract and had undertaken the work of distributing sugar under the Sugar and Gur Control Order of the Central Government on behalf of the State of Vindhya Pradesh, that the said joint family firm possessed a licence for the said distribution of sugar, that the Respondent No. 1 also possessed a licence for the sale of controlled grain, that the Respondent No. 1 was below 25 years of age at the time of his nomination, that the Respondent No. 1 did not take the previous permission of the Returning Officer for the allotment of a symbol chosen by him as required under the rules, that the nomination paper of the Respondent No. 1 was not duly filled up and that, therefore, the Respondent No. 1 was disqualified from being chosen as a member of the Legislative Assembly under Section 7(d) of R. P. Act, 1951 and his nomination was defective.

As regards the Respondents Nos. 3 and 4 the only allegation made was that their nomination papers were not duly filled up and the allotment of a symbol was illegal. In short, the allegation was that their nomination was defective. We may dispose of the case against the Respondents Nos. 3 and 4 at this very place by observing that it has not been pressed before us in arguments nor has any evidence been led on the point.

As regards the Respondents Nos. 5 and 6 it was alleged that they had not declared in their respective nomination papers that they were seeking election to the reserved seat also and hence the allotment of a "reserved" symbol to them was wrong. Further about Respondent No. 5 it was also alleged that he was below 25 years of age at the time of his nomination. These objections as against the Respondent Nos. 5 and 6 have also not been pressed and may be disposed of at this very place.

As regards the Respondent No. 7 the allegation was that he was below 25 years of age on the date of the filing of his nomination paper. We may also dispose of this short point at this very place. A reference was made to Article 173 of the Constitution which prescribes that a person must be above 25 years of age to be qualified to be chosen to fill a seat in the Legislative Assembly of a state. The same qualification for membership of the Legislative Assembly of Part C State is contained in Section 7 of the Government of Part C States Act 1951 (Act 49 of 1951). This Section provides that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless he is not less than 25 years of age. We have to examine, therefore, if Sheo Narain Khare was less than 25 years of age on the date of the filing of his nomination paper. We may observe at the outset that Sheo Narain Khare contested the election and went to the polls. He secured no less than 5,035 valid votes when the highest number of votes secured by the successful candidate for the non-reserved seat, viz. Laxami Narain Mateh, Respondent No. 1 was only 5,880. Sheo Narain Khare is a law Graduate and was the Dewan of the erstwhile Khania Dhenai State. His father Girja Prasad, Respondent No. 11, was also a candidate for the same non-reserved seat. He withdrew his candidature after his and his sons' nominations were declared valid. Shri Sheo Narain Khare is designedly not the petitioner to challenge the election of the Respondents Nos. 1 and 5 who secured the highest number of valid votes for their two seats. A mere voter, namely Shri Balchand, is the petitioner along with another candidate for the reserved seat. Reliance is being placed on behalf of the petitioner on the date of birth of Sheo Narain Khare, viz. 24th December 1926 as mentioned in the copy of the Scholar's Register filed on the record. From that entry in the Scholar's Register Sheo Narain Khare would be 20 days short of 25 years on the date of the filing of his nomination paper viz. 5th December 1951. It has been argued on behalf of the petitioners that the result of the election was materially affected by the improper acceptance of the nomination paper of Sheo Narain Khare by the Returning Officer. Nobody, had, however, challenged the date of birth of Sheo Narain Khare before the Returning Officer and since his age was given in the Electoral Roll, the Returning Officer did not err in accepting his nomination paper in which he himself declared that he was of the requisite age. The Returning Officer could not suspect that the age of Sheo Narain Khare was wrongly declared before him, as the best person to know the correct age of Shri Sheo Narain Khare,

viz. his father, was also a candidate at the same election and he too did not challenge that age. The father of Sheo Narain Khare thus made the Returning Officer believe by his conduct that his son was duly qualified, in respect of age, to be a candidate. The entry in the Scholar's Register was at best the declaration of the age of Sheo Narain Khare made by his father at the time he was got admitted in school. Girja Prasad, father of Sheo Narain Khare, has been examined as a witness for the petitioners and is P.W. 24. He deposes that he got Sheo Narain Khare admitted in IV class at Datia in the L.R. High School and himself filled up the admission form Ex-5. At the scrutiny of the nomination before the Returning Officer the convenient memory of Girja Prasad failed him and he raised no objection to the age of his son. Since no objection was raised about the age of Sheo Narain Khare, the Returning Officer, while examining the nomination papers, naturally held Sheo Narain Khare to be qualified to be chosen to fill a seat in the Assembly. The question for our consideration at this stage is not what would have been the exact age of Sheo Narain Khare on the date of his nomination, but whether the acceptance by the Returning Officer of his nomination was improper. There is nothing to suggest on the record that the decision of the Returning Officer accepting the nomination paper of Sheo Narain Khare was in any way improper. Further more no reliance can be placed on the statement of Girja Prasad relating to the exact age of Sheo Narain Khare on the date when he got him admitted in school or when he came forward to depose on oath before us. He was fully aware that his son was a candidate for the election and even goes on to say that he would have contested the election if the nomination paper of his son would have been rejected. We are shocked at the conduct of Girja Prasad in allowing his son to fight the election as a duly qualified candidate, in whose favour he withdrew from the contest, and when his son was defeated at the polls, to turn round to say on oath that his son was not duly qualified, being 20 days short of 25 years of age.

We now take up the case against Respondent No. 1. We have already given our reasons in petition No. 306 of 1952 Ganga Prasad Shastri Vs. Panna Lal and others why in our opinion the disqualifications for membership of Parliament or of a State Legislature given in chapter II of R. P. Act, 1951 would be the disqualifications for membership of the Legislative Assembly of a Part C State as well, by virtue of Section 17 of the Government of the Part C States, Act, 1951. Briefly speaking Section 17 aforesaid places a candidate for the Legislative Assembly of a Part C State on the same footing, (so far as the disqualifications are concerned), as a candidate for either House of Parliament. In other words if a person shall be deemed to be disqualified for being chosen as, and for being, a member of either House of Parliament under any of the provisions of Article 102, he shall also be deemed to be disqualified for being chosen as, and for being, a member of the Legislative Assembly of a Part C State. A candidate for either House of Parliament is hit by the provisions of Section 7 of the R. P. Act, 1951 in view of Article 102(1)(e) of the Constitution, as Section 7 R.P. Act, 1951 prescribes disqualifications for membership of Parliament etc. within the meaning of Article 102(1)(e). These provisions relating to disqualifications are of a universal nature both for membership of Parliament and a State Legislature and would also apply to a Part C State unless any different disqualifications are found to be prescribed for a candidate for the Legislature of a Part C State under the Government of Part C State Act, 1951. As already observed, under the heading disqualifications for membership (section 17), the disqualifications for being a member of either House of Parliament have been adopted for being a member of the Legislative Assembly of a Part C State as well. Hence if a candidate for either House of Parliament is hit by the disqualifications under section 7 of the R. P. Act, 1951 there is no reason to doubt that the candidate for the Legislative Assembly of a Part 'C' State would also be hit by the same disqualifications. To hold otherwise would open the door for the stooges and contractors of Government and other undesirable persons who have been debarred under Section 7 of the R. P. Act, 1951, being chosen as and for being, members of the Legislative Assembly of Part C States. For example Section 7 of the R. P. Act, 1951, debar a person for being chosen as, and for being, a member of either House of Parliament if having held any office under the Government of India or the Government of any State or under the Crown in India or under the Government of an Indian State, he has, whether before or after the commencement of the Constitution, been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal. If this disqualification prescribed under Section 7(f) would not apply to a candidate for the Legislature of a Part C State, such an undesirable person shall be deemed to be qualified for being chosen as, and for being a member of the Legislature of a Part C State. Similarly an ex-convict, who has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than 2 years would be eligible for

membership of the Legislature of a Part C State without waiting for a lapse of a five years time or without seeking the help of the Election Commission in that behalf under Section 7(b). It may be argued that the Parliament while enacting, the Government of Part C States Act, 1951, deliberately omitted these disqualifications as different conditions prevailed in the Indian States some of which are now grouped under Part C States. But this argument would not be tenable in view of the fact that some of the Part C States e.g., Ajmer and Delhi were always governed by the same laws as the rest of British India and the conditions there could not be different from those in other parts of British India. We need hardly emphasise that the Government of Part C States Act, 1951 brings in different provisions of the R. P. Act, 1951, under different headings in the appropriate Sections and simply because Part II does not find a place under Section 8, where there was no need to mention it, it could not be said that Part II was entirely excluded or omitted in its application to Part C States.

We, therefore, proceed to consider whether the Respondent No. 1 was disqualified from being chosen as a member of the Vindhya Pradesh Legislative Assembly within the meaning of Section 7(d) of the R. P. Act, 1951. The Counsel for the Respondent No. 1 admitted under Order 10 Rule 2 C.P.C., that the Respondent No. 1 was a Member of the joint Hindu family with his uncle Khusali Ram but alleged that he had no interest or share in the firm Panna Lal Khusali Ram. He, however, admitted that the aforesaid firm was the joint Hindu family firm of the Respondent No. 1, that at the time of the nomination the said joint family firm was a member of the Sugar Syndicate, Datia, and that the aforesaid firm had secured a license for the sale of controlled articles from the Vindhya Pradesh Government. The learned counsel for the Respondent No. 1, however, went on to say that the Respondent No. 1 did not know if the Sugar Syndicate was entrusted by the Vindhya Pradesh Government with the work of distribution of sugar in Datia and maintained that none of those facts, constituted any disqualification as the V.P. State had no interest in the Sugar Syndicate. The learned counsel for the petitioner argued that since the joint family firm of the Respondent No. 1 was a member of the Sugar Syndicate at Datia which had undertaken the work of distribution of sugar from the Vindhya Pradesh Government through the Deputy Commissioner of Datia, the Respondent No. 1 was hit by the provisions of Section 7(d) of the R. P. Act, 1951. Reliance is placed on the statement of Dinesh Singh, District Supply Officer (P.W. 10) who has proved that on 12th January 1951, M/s. Panna Lal Khusali Ram applied for being included in the Sugar Syndicate, Datia. Their application is Ex. 8 which bore the signature of the Respondent No. 1 only. We, therefore, hold that the respondent had an interest in the work of distribution of sugar undertaken by the Sugar Syndicate, Datia. But all the same we are inclined to hold that this does not entail any disqualification mentioned in Section 7(d) of the R. P. Act, 1951. We are unable to agree with the contention of the petitioners that the V.P. Government had undertaken the service of supplying sugar to the people nor was the syndicate under any contract with the Government to perform such a service on their behalf. The arrangements made in connection with the distribution of sugar were all done by virtue of the Essential Supplies (Temporary Powers) Act, 1946. This Act provides for the continuance, during a limited period, of all powers to control the production supply, and distribution of, and trade and commerce in, certain commodities and there is no indication, either in the preamble of the Act or in its provisions, that the Government was undertaking the task of supplying controlled goods to the people. The Act merely authorises the imposition of certain restrictions in the matter of production, supply and distribution of certain commodities. The exercise of such restrictions does not make the Government responsible for the supply of the commodities concerned. The Sugar Control Order was made under the said Act and the V.P. Government did not undertake the service of supplying sugar to the people by carrying out the directions of the Central Government under the Sugar Control Order. We have already made our observations in some detail relating to the disqualifications of the candidates under Section 7(d) of the R. P. Act, 1951, in our Order of today's date in E. P. No. 258 of 1952 Lakshmi Narain Naik Vs. Lala Ram Bajpai and others. In the light of those observations, which we need not recapitulate, and in view of the further fact that even if the service to supply the controlled sugar to the people was undertaken by any Government, the appropriate Government within the meaning of Section 7(d) R. P. Act would be the Central Government and not the V.P. Government. The same view has been taken in respect of another controlled commodity in E. P. No. 1 of 1951 decided by the Saurashtra Tribunal in their judgment, dated Bhavanagar, the 23rd June, 1951 published in the *Gazette of India* of July 12, 1952 at No. 18/1/51 Elec. III, dated the 7th July, 1952 at page 321. We, therefore, hold that the respondent No. 1 was not disqualified under Section

7(d) of the R. P. Act, 1951 by reason of his possessing an interest in the joint family firm which had become a member of the sugar syndicate Datia or by reason of holding a licence for the sale of any controlled grain.

The only other point now left to be considered under these issues relating to Respondent No. 1 is whether the allotment of a symbol to the Respondent No. 1 was illegal and as such his nomination was defective. The contention of the petitioners in this behalf is that the declaration as to the symbol selected by the Respondent No. 1 should have accompanied his nomination paper. The Respondent No. 1 has specified a symbol selected in his nomination paper although he had not taken any prior permission of the Returning Officer for selecting that symbol. It has been pointed out on behalf of the petitioners that the Respondent No. 1 did not take any prior permission of the Returning Officer in selecting his symbol which fell within items 1 to 14 of the list of symbols. In pursuance of sub-rule 1 of Rule 5 of the Representation of the People (Conduct of Election and Election Petitions) Rules 1951, the Election Commission had published a list of symbols which could be used at elections to a Parliamentary constituency or an Assembly constituency or a Legislative Assembly of a Part C State and had signified in that list that no candidate shall choose except with the permission of the Returning Officer, any of the symbols specified in items 1 to 14 of the list, *vide* the Election Commission Notification No. 32/1/51-Elec.II(2), dated the 8th September, 1951 published in the *Gazette of India Extraordinary* 1951, Part I Section 1, p. 256. But in view of the fact that the respondent No. 1 had signified the symbol chosen by him in his nomination paper and of the fact that the same symbol was allotted to him by the Returning Officer the permission of the Returning Officer to choose that symbol was clear. In our opinion it is of no consequence whether the choosing and declaration were simultaneous or otherwise. No separate application was necessary for choosing the symbol. We, therefore, attach no importance to this objection of the petitioners.

We, therefore, hold that none of the nomination papers were improperly accepted. The further question whether the improper acceptance of any nomination paper has or has not materially affected the result of the election does not thus arise. All these issues are, therefore, decided against the petitioners and in favour of the contesting respondents.

Issue No. 13.—The allegation relating to this issue is contained in clause (n) of para. 8 of the petition which runs as follows:—

“Because the respondents Nos. 1 and 5 freely distributed at various polling stations during the poll biris, betels and sweets amongst the voters.”

The same allegation is contained in particular No. 3 of the list of particulars with the addition of the names of some of the polling stations where this kind of treating to voters is alleged. It is significant, however, that neither the names of any voters so treated are mentioned either in the said clause or in the particular mentioned above nor was any complaint of this nature made to the Presiding Officer in writing. The witnesses produced by the Petitioners in connection with this allegation are P.Ws. 1, 4, 12, 13, 15, 16, 23 and 35; but their evidence is equally vague and hence undependable. Their memory always fails when tested in cross examination. The learned Counsel for the petitioners has invited our attention to the receipt for Rs. 109 in the return of expenses, Ex. 46. He meant to suggest that such a big amount could not have been spent on these items unless it was spent to treat the voters generally. But he forgot that there were 48 polling stations and the expenses at each polling station would come to only Rs. 2/8/. The issue is decided against the petitioner.

Issue No. 14.—The allegation relating to this issue is contained in clause (o) of para. 8 which is as follows:—

“Because Respondent No. 6 does not belong to the Schedule Caste community (being a Jatav or Jatua and not a Chamar) and acceptance of his nomination paper has been wrongful and has materially affected the result of the election.”

The petitioner has deposed that the respondent Chaturi is a Jatav and not a Chamar and that ‘Jatava’ was not a Scheduled caste for the purposes of Vindhya Pradesh. In Part X of the Constitution (Scheduled Castes) (Part ‘C’ States) Order, 1951, we find only the caste Chamar is mentioned. The Section 2 of this order runs as follows:—

“Subject to the provisions of this Order, the caste, races or tribes, or parts of, or groups within, castes or tribes, specified in parts I to X of the Schedule to this order shall, in relation to the States to which those parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule.”

We emphasise the words 'the castes, or parts of or groups within castes' in this section with reference to parts I to X of the schedule and would like to mention that it part V of the Schedule 'Jatia or Jatav Chamar' is mentioned. In our opinion where the caste alone is mentioned the parts of groups within that caste shall be deemed to be included in it. P.W. 20 deposed that he knew Chaturi Chamar and that he was a Jatav. Later on the witness realized that he should not have said so and tried to change his statement. While talking of the federation in Vindhya Pradesh he admitted that Jatavas were treated as Schedule caste. P.W. 26, P.W. 27, P.W. 37 and R.W. 5 are the witnesses produced by the parties in connection with this point. They all say that Chaturi is a Jatava. R.W. 8 points out that the difference between Chamar and Jatava in Vindhya Pradesh is the same as in Kaunch and Jalaun. In our opinion there is no substance in the allegation of the petitioners that the acceptance of the nomination of the Respondent No. 6 as a member of a Scheduled caste was improper as he was a Jatava. It is thus not necessary to see whether the improper acceptance of the nomination of the Respondent No. 6 materially affected the result of the election. The issue is decided against the petitioners in the negative.

Issue No. 15.—The allegations relating to this issue are contained in clause (p) of para. 8 of the petition which runs as follows:—

"Because the nomination paper of Shri Goti Ram was improperly rejected and this has materially affected the result of the election."

The petitioners have examined Goti Ram (P.W. 8) who deposes that his father was also called Chhiraaulaji although his name was Garibdass. Two nomination papers were filed by Goti Ram, one for Seondha Constituency which is Ex. 1 and the other for Datia Constituency which is Ex. C-1. In Ex. 1 Goti Ram described himself as Goti Ram Chhiraaulia s/o Garibdass while in Ex. C-1 he described himself as Goti Ram, s/o Chhiraaulia. An objection was raised before the Returning Officer who wrote his order on the back of these nomination papers rejecting the nominations. In the electoral roll of Datia Constituency where Goti Ram resides. (Ex. 3), we find the name Goti Ram Chhiraaulia only written against No. 311 at page 4 which we have underlined in red pencil. It is noticeable that in this electoral roll there are quite a number of names of voters without their fathers' names being mentioned in the column of which the heading is "Name of the voter with the name of his father or husband". For example the names against Nos. 337, 343, 347, 352, 354, 364, 379, 414, 421, 444, 449 and 494 and so on. The Returning Officer passed the following order on the back of Ex. 1:—

"The objection raised in his case is over the wrong entry of Father's name. This candidate filed two nomination papers. In one, he writes his father's name as "Chhiraaulia" in the other he writes his father name as "Garibdass". The two nomination papers are about Datia and Seondha Constituency, one for each. Today is the scrutiny day of both and all candidates have inspected the nomination papers. Although each nomination paper should be dealt with by itself, the difference in the father's name in the two nomination papers can be pointed out by the opposite party, as has been done in this case. The difference in father's name affects the question of identity of a candidate. In this case it is of a nature which justifies, in my opinion the rejection of the nomination papers and the same are hereby rejected."

Chhiraaulia was evidently a surname of Goti Ram's family and both he and his father could be called Chhiraaulia. Our view is that the name of Goti Ram's father was omitted from the electoral roll of Datia Constituency in which he lived, and as such the Returning Officer was not justified in rejecting the nomination papers for either Datia or Seondha Constituency. The Returning Officer passed the following order on the nomination paper relating to Datia Constituency which is Ex. C-1:—

"In the Electoral Roll the name entered is Goti Ram Chhiraaulia, it is said that Chhiraaulia is not any name but surname of the family. It is also pointed out that in his other nomination paper in connection with Seondha Constituency, he mentioned his father's name as Garibdass. Although each nomination paper should be considered on its own merit, without reference to any other, both have come up for scrutiny today before me and it is open to objections to point out the discrepancy of this nature, by saying that the candidate has mentioned quite a different name about his father in any of his nomination papers. There is no slight change here but a different name, and his nomination paper is rejected."

The learned counsel for the Petitioner has referred to the Statement of the Returning Officer (R.W. 23) who has said that he knew Goti Ram for a long time, even if it be said that the Returning Officer could not impart his personal knowledge in deciding objections he had no business to mix up one nomination relating to one Constituency with another nomination of another constituency which he has apparently done in passing the above two orders on the said two nomination papers. If the name of father was omitted in the electoral roll, as already pointed out, the Returning Officer should not have rejected the nomination of Goti Ram so far as Seondha Constituency was concerned where the name of father was correctly given. We are directly concerned with Seondha Constituency and not with Datia Constituency but we may mention in passing that the other nomination paper too should not have been rejected even if Goti Ram had mentioned Chhiraaulia as his father's name, as after all his father was a Chhiraaulia. We need not refer to the evidence of other witnesses examined in this behalf as it is not denied on behalf of the respondents that the name of Goti Ram's father was Garib Dass. In our opinion, therefore, the Returning Officer has improperly rejected the nomination of Goti Ram for Seondha Constituency. It has uniformly been held by all the Election Tribunals in India that the result of the election is materially affected by the improper rejection of a nomination. We, therefore, hold that the rejection of nomination of Goti Ram Chhiraaulia in Seondha Constituency materially affected the result of the election and as such the election should be declared wholly void under Section 100 (1) (c) of the R. P. Act, 1951.

Issues Nos. 16 and 23.—These issues are based on clauses (q) and (r) of para. 8 and particulars Nos. 4, 6 and 7. The clauses Nos. (q) and (r) run as follows while particulars Nos. 4 and 7 embody them briefly:—

“(q) Because Shri Kashi Prasad with the connivance and under the influence of Respondent No. 1 and his Agents published and distributed a pamphlet containing false and defamatory statements against the Respondent No. 7.

(r) Because the Respondent No. 1 himself and through his Agents, workers and supporters got pamphlets containing defamatory statements against the Respondent No. 7 distributed and these pamphlets did not on the face of it disclose the name of the publisher.”

Par. No. 6, “That the Respondents Nos. 1 and 5 themselves and their agents, workers and supporters distributed wine free of charge amongst the voters of Podari, Seondha, Unnad, Badami, and Basai and Kudari on the night immediately preceding the date of polling at the places mentioned above with a view to induce the voters to vote for the Respondents Nos. 1 and 5 and to refrain from voting in favour of the petitioners.”

That pamphlet is said to be Ex. A-2. This was in reply to the pamphlet entitled “Om Kri Bumb”, Ex. A-1 against the Respondent No. 7. Kashi Prasad (P.W. 25) says that Miharban Singh and Ram Dass obtained his signatures on the original pamphlet which was later printed and published at Datia by giving Kashi Prasad Rs. 25 in the wine shop. The Respondent No. 1 admits that he paid for the printing charges of this pamphlet and that the original of the pamphlet was given to him by Miharban Singh and Ram Dass. He further admits that those persons had told him that if such a pamphlet was distributed in Basal area it would have a good effect. He also admits that he asked them to get the pamphlet printed and distributed. There is a receipt relating to the printing charges of the pamphlet in the return of expenses submitted by the Respondent No. 1. Ram Dass, Respondent No. 5, did not deny the statement of Kashi Prasad. It is thus evident that the pamphlet Ex. A-2 was published with the connivance of the Respondents Nos. 1 and 5. In Ex. A-2 the following words are said to be defamatory:—

“Ap ne mujh ko Sharab pila kar ek kore kagaz par Dastkhat karae. Ap ke dhoke men praja nahin a sakti hai.”

But Kashi Prasad now says that the Respondent No. 7 never obtained his signature by giving him wine. The Respondent No. 7 has not entered the witness box. It is difficult to believe a man like Kashi Prasad. We cannot on his testimony say which of his allegations was true and which false. The entire allegation is by way of explanation of Kashi Prasad's own conduct in putting his signatures and deserves no serious notice. In our opinion it does not amount to a corrupt practice under Section 123 (5) of R. P. Act, 1951 as it does not appear to relate to the candidature of Respondent No. 7.

Although there is no allegation of treating the voters with wine in the petition there is a mention of it in particular No. 6 above and a repetition about Batai in particular No. 8.

The witnesses examined in this behalf are Kunja (P.W. 3), Deo Lall (P.W. 4), Ghasita (P.W. 13), Gokul Prasad (P.W. 14), Kasia (P.W. 16), Ram Gopal (P.W. 21), Ram Dayal (P.W. 29), Dhanna (P.W. 33), and Mata Din (P.W. 34). A majority of these witnesses belong to the erstwhile Khaniadhana State in which the Respondent No. 7 was a Dewan. The father of the Respondent No. 7 was also a Dewan there before. The remaining witnesses are of Seondha. It has not been made clear in the evidence at which particular place this kind of treating was done, whether at the buildings of the polling stations or at any wine-shop or at the house of any particular person. All this allegation appears to have been made by winning over Miharban Singh P.W. 23 who was the polling agent of Respondent Nos. 1 and 5. This Miharban Singh is also of Khaniadhana State. The evidence of this witness is not at all convincing in this behalf. His testimony is in fact no better than that of a co-conspirator in the commission of a corrupt practice. He is a turn coat and hence his testimony is suspicious. None of the chits said to have been issued by Miharban Singh for the supply of wine by Ram Gopal (P.W. 21) have been produced. Ram Gopal was carrying on a liquor-shop at Burdwan in Khaniadhana State. Miharban Singh is said to have told him that he was canvassing for the Respondent No. 1 and that he would send parchis through Kasia Kori when the liquor would be required. This man is said to have supplied liquor for about 15 or 20 days preceding the polls. According to him Miharban Singh paid the price of the liquor ordered through those parchis excepting about Rs. 5. He says that he submitted a bill with those parchis to Miharban Singh and only kept a copy of the bill with him. While delivering those chits with the bill to Miharban Singh, he did not take the signature of Miharban Singh on the copy of the bill kept with himself. He kept no register indicating the daily sales of liquor. He says that the order was that he should sell one bottle of liquor to one man at a time but since no-body was to check it he supplied as many bottles as were demanded by any man. Much reliance cannot be placed on the copy of the bill produced by him. We are not at all impressed by the testimony of the said P.Ws. or of Miharban Singh and decide the issue against the petitioners, in the negative.

These issues are thus decided against the petitioners.

Issue No. 17.—This is based on clause (s) of para. 8 and particular No. 10 which are as follows:—

"Clause (s) Because at Basai polling station more than 400 voters of the petitioner No. 2 who had come within the enclosure before 4 P.M. were illegally prevented from casting their votes and were driven out by the Police under the orders of the Presiding Officer."

"Par. 10. That at the instance of and in connivance with the Respondent No. 2, Nos. 1 and 5 their agents, workers and supporters, the Presiding Officer at polling station Basai refused to issue the ballot papers and allow to vote, about 400 voters who had reached the polling station before 4 P.M. and had entered the enclosed area of the said polling station."

Reliance is placed on behalf of the petitioners on the testimony of Mathura Das (P.W. 2), Chhateri (P.W. 5), Halla (P.W. 6), Balla (P.W. 7) and Hazari Lal Bhatta (R.W. 1), the Presiding Officer. P.W. 2 states that at about 3 P.M. there were 400 voters inside the enclosure who were turned out by the police and so he was prevented from voting as he was one of those 400 voters. Similar statements are made by P.Ws. 5 to 7. Presiding Officer (R.W. 1) admits that at about 4 P.M. a crowd of voters had gathered inside the compound of the booth, that he asked them to form a queue, that they formed a long queue containing about 300 voters, that he got the votes of only those voters cast in that queue who extended up to the outer gate of the compound i.e. about 200 voters, that he stopped through police the other voters from entering the compound who were beyond the said gate and that if he had allowed all the others to come in it would have delayed the voting too long. He further admitted that about 600 men could gather in that compound altogether. The learned counsel for the petitioners has argued that at least 150 voters were not allowed to cast their votes. This Presiding Officer had no business to exclude the persons who had entered the compound before the hour of closing from casting their votes. Under Rule 17 of the Representation of the People (Conduct of Election and Election Petitions) Rules 1951, the Presiding Officer should have closed the polling station at the hour fixed in that behalf by closing the outer gate of the compound but all the voters present within the polling station before the hour of closing should have been allowed to record their votes. The Presiding Officer thus committed a breach of the said rule by adopting that novel procedure of forming a queue before the closing hour. The learned counsel for the petitioners has,

however, conceded that this non-compliance with Rule 17 cannot be said to have materially affected the result of the election which he was required to show under section 100 (2) (c) of R. P. Act, 1951. From the result of voting too it is clear that the said non-compliance did not materially affect the result of the election. The issue is decided accordingly against the petitioners.

Issue No. 18.—The allegations in clause (t) and (u) of para. 8 are as follows:—

- “(t) Because the members of the Congress as a party along with their supporters agents and workers openly intimidated and exerted undue influence on the voters to vote for the Respondent No. 1 and 5 and they made the voters refrain from voting in favour of the petitioners. All such persons acted with the connivance and as agents of the Respondent Nos. 1 and 5. This state of affairs prevailed extensively at the election owing to which the election has not been a free and fair election.
- (u) Because the Vindhya Pradesh Government officials of all ranks were bitterly against the K. M. P. Party with which the petitioner No. 2 made a local pact in contesting the elections and these officials actively participated in the election by canvassing and committing other malpractices, undue influence and coercion with a view to secure the success of Respondent Nos. 1 and 5 and the defeat of the petitioner No. 2 who had made a local alliance with the K. M. P. Party in the election. The various illegalities and irregularities complained of in this petition were perpetrated by the V. P. Government officials in active connivance with and at the instance of the Congress Party leaders in the V. P. and Respondent Nos. 1 and 5.”

Although a general allegation as in clause (u) was made the learned counsel for the petitioners confined his argument to the employment of Zamindars and Mukhias as polling agents by the Respondents Nos. 1 and 5. The particular No. 9 relating to Shri R. N. Misra, Assistant Returning Officer of the Constituency, was not pressed. It may be mentioned at the very outset that there was no mention of such an employment of Zamindars and Mukhias either in the petition or in the list of particulars, but the Respondent No. 1 (R.W. 25) admitted that he employed Chunna Lal of Rampura as his polling agent in Bhabuapura. He further admitted that he employed all those persons as his polling agents whose names are contained in the Appointment Forms in file No. 309 Ex. 31 and 32. He also admits that they all worked as his polling agents. The witness further proved the consolidated list of his polling agents which is Ex. 31/1 and which is in his own handwriting and bears his signature, vide his statement at the end of cross-examination. From the evidence on record it has become quite clear that the Respondent No. 1 employed Chunna Lal who is a Patel, Ram Dayal another Patel of Barauni Khurd, Khalsa Patti and Gokul Patel of Seondha. He further attempted to employ Brikh Bhan Mahton, Patel of Nayakhera, through his canvasser and Agent Kanhya Lal (R. W. 13). Brikhbhan is said to have refused to work as polling agent on the grounds that he was a Patel. Rampura, Barauni and Seondha have been shown to be the villages of the erstwhile Datia Raj with reference to a map issued by the Central India Agency. Our attention has been drawn to Section 5 (25) of the Model Land Revenue and Tenancy Act by Badri Prasad applicable to those villages formerly. This section defines Patel or Mukhia as meaning the village headman appointed under the said Act. Section 180 of the said Act lays down the duties of Patels and Mukhias. This Act also provides for the appointment, dismissal, punishment and remuneration of Patels by the State. Patels or Mukhias were thus the headmen of the villages within the meaning of Section 123 (8) Explanation (6) of the R. P. Act, 1951, which makes the employment of Patels and Mukhias a major corrupt practice. We have already given detailed reasons for holding why the employment of such headmen of the villages is a major corrupt practice in our judgments of today's date in E. P. Nos. 258 and 259 of 1952, Laxmi Narain Vs. Lala Ram Bajpai and others and Jang Bahadur Singh Vs. Basant Lal and others. For the reasons given in detail in those judgments we hold that the Respondents Nos. 1 and 5 committed a major corrupt practice by employing the said Patels and Mukhias as polling agents. Although this allegation was not in the petition or in the list of particulars, as already pointed out at the very beginning, the allegations stand admitted by the Respondent No. 1 as explained above.

Issue No. 19(a).—We have already excluded evidence relating to this part of the issue in our findings on the preliminary issues which include 19 (b). The issue is, therefore, decided against the petitioners as they have not been allowed to lead evidence to show the falsity of the returns etc.

Issue No. 20.—Clause (x) runs as follows:—

“Because at China polling station there was no sufficient light where the ballot boxes were kept and the voters could not see the ballot boxes and the symbols and about 400 ballot papers were rejected as they were left outside the box.”

Some evidence has been led on behalf of the petitioners relating to the insufficiency of light in the Polling Station China which has been sought to be refuted by the contesting respondents. We do not attach much importance to the evidence either way. No such complaint was made to the Presiding Officer in writing. In our opinion sufficient and proper arrangements were presumably made and we decide the issue against the petitioners.

Issue No. 21.—This related to the particulars Nos. 1 to 4 which we need not quote as particular No. 1 was not pressed before us, particular No. 2 has already been discussed along with issue No. 13, particular No. 3 has also not been pressed and particular No. 4 has already been dealt with under issue No. 15. This issue is, therefore, disposed of against the petitioners in the negative.

Issue No. 22.—The particular No. 5 runs as follows:—

“That Shri W. V. Kelkar the Returning Officer of Datia threatened the polling agents of the petitioner No. 2 and Respondent No. 7 with the dire consequences if they did not stop working and supporting their candidature.”

No evidence relating to this allegation has been given and hence we hold that it is not proved. The issue is decided against the petitioners.

Issue No. 28.—In view of our findings on the preliminary issue No. 27 given on January 24, 1953 to the effect that the Respondents Nos. 3 and 7 cannot support the petition on the grounds of irregularities and illegalities not alleged by the petitioners themselves, the allegations contained in para. 11 of the written statement of the Respondent No. 7 and para. 9 of Respondent No. 3 cannot be looked into and cannot have any effect.

The issue is decided against the petitioners.

- 1.
- 2.

In accordance with the findings of the majority of the members,

ORDERED

We declare the election of Seondha Constituency in Datia District as wholly void under Section 100 of R. P. Act. Under the circumstances of this case we order that the parties shall bear their own expenses.

Nowgong,

The 10th November 1953.

Chairman.

Member.

Member.

DISSENTING JUDGMENT

I have, with due respect, disagreed with my colleagues on some issues or portions of some issues. I give below my reasons for the same.

Issues Nos. 1 to 6.—It is my view that there has been no defect in the design or manufacture of the ballot boxes. One of the two persons viz. Jang Bahadur Singh who demonstrated before the Tribunal how the ballot boxes could be opened without damaging any of the seals or breaking the twine admitted that if the wax seals were put quite close to the knots of the twine on the lid then it would be impossible to open the box in the manner he and his companion Jai Singh did. I have discussed this at some length in E. P. No. 257 of 1952, *Vidya-wati Vs. Mahendra Kumar* dated 10th November 1953. As there is no inherent or intrinsic defect in the manufacture of the ballot boxes, I hold that non-compliance with any election law or rule has not been established.

Issue No. 7.—I am of the opinion that the disqualifications for the membership of a State Legislature as laid down in R. P. Act, 1951 are not applicable to Part C States. There has been a special enactment in this regard by Parliament called Part 'C' States Act, 1951 which derives its force from Art. 240 of the Constitution.

Moreover in Section 8 of the Part 'C' States Act, 1951, Part II of the R. P. Act, 1951 has been deliberately omitted. With this statutory omission there is no point in looking at the scheme and framework of the R. P. Act, 1951 or of the Part 'C' States Act, 1951. I have dealt with this aspect of the law in E. P. No. 257 of 1952, Vidyawati Vs. Mahendra Kumar dated 10th November, 1953. Further discussion is unnecessary as I hold that the petitioner has failed to show any legal basis for his allegation.

(Sd.) P Lobo,
Member.

The 10th November 1953.

ANNEXURE

IN THE COURT OF THE ELECTION TRIBUNAL NOWGONG V. P.

PRESENT

1. Shri S. N. Vaish—Chairman.
2. Dr. L. N. Mishra, M.A. LL.B. Ph.D.—Member.
3. Shri P. Lobo, Advocate Supreme Court—Member

ELECTION PETITION No. 309 OF 1952.

1. Shri Dal Chand.
2. Shri Har Das Chamar—Petitioners.

Vs.

1. Shri Laxami Narain.
2. Shri Ram Anugrah Singh.
3. Shri Bhagwan Das Mateh.
4. Shri Sanker Singh.
5. Shri Ram Das.
6. Shri Shaturi Chamar.
7. Shri Sheo Narain Khare.
8. Shri Sripat Singh.
9. Shri Ram Sewak Gupta.
10. Shri Ramdin Caste Vaish.
11. Shri Girja Parsad.
12. Shri Har Narain Chamar—Respondents.

ORDER

This is a petition under section 81 of the R. P. Act of 1951 filed by the petitioners above named calling in question the election of Respondent Nos. 1 and 5 to the Vindhya Pradesh Legislative Assembly from the double member Seondha Constituency, District Datia. The Respondent Nos. 8 to 12 are alleged to have withdrawn their respective candidature and the petitioner No. 2 and Respondent Nos. 1 to 7 are alleged to have gone to the poll.

The Respondent Nos. 1, 3, 5 and 7 have filed written statement and Respondent Nos. 3 and 7 support the petitioners.

The election has been challenged on various grounds consisting of corrupt practice and illegal practices, defective Ballot Boxes, tampering with them, undue influence and the disqualifications of the Respondents Nos. 1 and 5 from being chosen as members of the Vindhya Pradesh Legislative Assembly as set forth in detail in the petition.

The Respondents Nos. 1 and 5 have denied all the allegations of the petitioners and have further attacked the petition alleging that it is not maintainable on account of non-compliance with the provisions of the R. P. Act, 1951. The pleadings of the parties gave rise to several issues of which the following were first taken up as preliminary issues:—

No. 19 (b).—Should the petitioners be debarred from producing evidence about the return being false by reason of their failure to give full particulars as required by section 83 (2)?

No. 24.—Is the petition defective for the non joinder of Shri Goti Ram and is it liable to be dismissed on that ground?

No. 23.—Are any of the particulars vague, ambiguous and general and do not satisfy the legal requirements? Is so, which and to what effect?

No. 26.—Is any additional security for costs necessary?

No. 27.—Can the Respondents Nos. 3 and 7 support the petition on the ground of any illegality and irregularity not alleged by the petitioners themselves?

FINDINGS

Issue No. 19 (b).—The petitioner's allegation on that point is contained in clause (n) of para. 8 of the petition on which reads as follows:—

"Because the returns of the election expenses filed by the Respondents Nos. 1 and 5 are false in material particulars and are not in the proper form and have not been verified properly."

The Respondents contend that this allegation is vague and general and that the petitioners have not given in the list, any particulars of the items in the return on the basis of which they have made this charge against the Respondents. The term "corrupt practice" has been defined in section 2 (c) of the R. P. Act, of 1951 as follows:—

"Corrupt practice means any of the practices specified in section 123 or section 124."

Section 124 (4) constitutes the making of any return of election expenses which is false in material particulars a corrupt practice. Section 83 (2) provides that this petition shall be accompanied by a List setting forth full particulars of any corrupt practice which the petitioner alleges. It is thus obvious that the petitioners were bound to give, in the list, full particulars of the said corrupt practice alleged by them and thus, so far as the commission of this alleged practice is concerned cannot be allowed to produce evidence about the return being false in material particulars.

Issue No. 24.—The Respondent's learned counsel has now conceded that Shri Goti Ram was not a duly nominated candidate and he no longer presses this issue. It is, therefore, held, that the petition is not bad for nonjoinder of Shri Goti Ram.

Issue No. 25.—There is sufficient material in the list and the petition of particulars as would comply with the legal requirements. In the R. P. Act, 1951 the petition and its accompanying list of particulars have always to be read and taken together for the purpose of giving notice to the returned candidates as to the charges which they have to meet. We hold that the particulars are not vague, ambiguous and general.

Issue No. 26.—This issue was not seriously pressed by the Respondent's counsel and the Tribunal is of the opinion that additional security for costs is not necessary.

Issue No. 27.—The Respondents Nos. 3 and 7, in their written statement, not only support the petition but also allege certain illegalities and irregularities on the part of the returned candidates which have not been alleged by the petitioners themselves. The petitioner's learned counsel relies on order 8 rule 2 C. P. C. and contends that a Respondent who has been called upon to file a written statement can take all the pleas which are in his knowledge which can be taken by a defendant in a suit. But the election Law is a special Law and, under section 80 of the R. P. Act, 1951, an election can be challenged only by the presentation of a petition within the prescribed period. The act does not contemplate the challenge of an election by means of written statement by a Respondent after the expiry of the prescribed period. The analogy of the C. P. C. cannot, therefore, be imported into the Election Law and the petitioners cannot be allowed to raise new grounds of attack through the Respondents by means of written statements, specially when the petitioners themselves cannot do so by amending their petition with the introduction of fresh allegations. The Tribunal, therefore, finds that the Respondents Nos. 3 and 7 cannot support the petition on the grounds of irregularities and illegalities not alleged by the petitioners themselves. One of us has disagreed with this view of the Majority of the Tribunal and his dissenting views on this issue are appended below:—

Nowgong V. P.;

The 24th January 1953.

1. (Sd) SHEO NARAIN VAISH,
Chairman.

2. (Sd.) L. N. MISHRA,

3. (Sd.) P. LOBO,

Members of the Tribunal.

Shri P. Lobo.

Issue No. 21.—I have seen the majority judgment with regard to this Issue and with great respect differ from it. It is difficult to understand what is the point in notifying all other duly nominated candidates to an Election Petition if they are to be joined as "dummy" respondents. If they are free to support they are also free to oppose the returned candidate. Their only function cannot be to bring up the rear in support of the returned candidate, does not belong to the political party of the returned candidate? True, the Legislature has set up a machinery with regard to any complaint that may be put up concerning an Election but it is just likely that such a duly nominated candidate as we are considering, has not been able to file a Petition for want of finance etc. and is possessed with the knowledge of some illegality or irregularity which the Petitioner may have been ignorant of: in the circumstances, I consider it would be in the interests of Justice to let a duly nominated candidate bring to the notice of the Tribunal in his written statement, which he has been called upon to file, any illegality or irregularity to which he can cover.

It is argued that it may happen that a Petitioner may fall on his own Petition and yet his desired result, of declaring the election, of the returned candidate or the whole election void, be achieved by virtue of a written statement filed by a respondent who is not the returned candidate. It is further urged that this would side track the period of limitation for filing Petitions as provided for in the R. P. Act and Rules of 1951, nay it is contended, that such a written statement, may virtually have the effect of an amendment of the petition. Considering all these aspects, I still fail to see why a relevant illegality or irregularity as framed in this Issue should not fully see the light of day and its wrong doers go unpunished. I therefore hold that there is no bar for a Respondent who is not a returned candidate to bring to the notice of the Tribunal, and incidentally perhaps support the Petition any illegality or irregularity not alleged by the Petitioner.

It was said in Bombay City (MU) 1924 case published at page 173 of Hammond's Indian Election Cases 1936 in Annexure as C at page 181 that the reason for joining other candidates as respondents was to give them an opportunity to raise recriminations to show that the Petitioner is not entitled to the declaration which he claims. This observation, it must be respectfully pointed out, does not meet the above discussion.

The Legislature may later define or limit the scope of the representation to be made by such respondents, who are not returned candidates, in their respective written statements but the Law as it stands at present places no bar on such respondents, at least to this limited extent, of placing before the Tribunal any illegality or irregularity committed at the Election.

NowGONG V. P.;

Dated the 24th January 1953.

(Sd.) P. LOBO.

[No. 19/309/52-Elec.III/7720.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

